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DETROIT DIESEL CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EUGENE GENCHEV, Plaintiff, vs. DETROIT DIESEL CORPORATION; and Does 10, inclusive, Defendant.	Case No. 08-CV-1021 W (NLS) **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION DISMISS PLAINTIFFS COMPLAINT FOR FAILURE TO STATE A CLAIM FOR RELIEF AND, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT;** **DECLARATION OF LISA KRALIK HANSEN;** **EXHIBITS** [FILED CONCURRENTLY WITH EVIDENTIARY OBJECTIONS TO EUGENE GENCHEV DECLARATION] Date: August 4, 2008 **[NO ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1(d)(1)]** (Complaint filed: 4/18/08)

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Contrary to the Opposition, there were established legal requirements that Genchev litigate any claims he had against Detroit Diesel along with his claims against Freightliner since he was suing for damage, down time and loss of use to the same two tractors. He cannot file separate warranty actions against the manufacturer of the truck chassis (Freightliner) and then later against the manufacturer of the diesel engine component (Detroit Diesel). Genchev is impermissibly splitting his claims arising out of the same two tractors and this second lawsuit should dismissed at the outset.

None of his arguments on the merits of the causes of action has any validity. Therefore, this lawsuit should not survive this motion.

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I. GENCHEV CANNOT FILE SUCESSIVE LAWSUITS OVER WARRANTY CLAIMS PERTAINING TO HIS TRUCKS

The Opposition is limited to asserting this case and the prior action against Freightliner are not "identical" and the deadline had passed in the prior action for Genchev to add new claims and/or new parties. (Opposition, p. 3-4) Not a single case is cited in support of Genchev's position. He fails to discuss even a single case cited in the Motion.

As addressed at length in the Motion, the law is clear – Genchev cannot litigate a second lawsuit over the same or overlapping damages to the same two tractors in two successive actions. He has impermissibly spit his claims by first suing Freightliner and now suing Detroit Diesel. All that is required is an "identity of claims," not that the claims are "identical." See W. Radio Services v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997). "The central criterion in determining whether there is an identity of claims between the first and second adjudications is 'whether the two suits arise out of the same transactional nucleus of facts.'" Frank v. United Airlines, Inc., 216 F.3d 845, 851 (9th Cir. 2000) (citation omitted). Both of Genchev's lawsuits clearly arise out of the same transactional nucleus of facts – his purchase of two Freightliner tractors which allegedly had nonconformities. (See Genchev's deposition testimony, Ex. 3 and 4 to Hansen declaration.) See Western Systems, Inc. v. Ulloa, 958 F.2d 864, 871 (9th Cir. 1992), cert. denied, 113 S.Ct. 970 (1993) ("related to the same set of facts and whether they could conveniently be tried together").

Genchev certainly had the opportunity to litigate his claims against Detroit Diesel along with his claims against Freightliner. He even opposed Freightliner's motion in limine seeking to confine the evidence at trial to those items falling under the Freightliner warranty, asserting he was entitled to present evidence of all damages to his tractors. (Ex. 5 to Hansen declaration) He could have filed a motion to modify the scheduling order deadline in order to bring Detroit Diesel into that lawsuit pursuant to Fed.R.Civ.P. 16 ("A schedule may be modified only for good cause and with the judge's consent"). He did not. Instead, he chose to proceed to trial against Freightliner only and he obtained a judgment without having Detroit Diesel present. Those actions preclude Genchev from now separately suing Detroit Diesel. The Ninth Circuit holds that California "recognizes that the doctrine of res judicata will bar not only claims actually litigated in a prior proceeding, but also claims that could have been litigated." Palomar Mobilehome Park Ass'n v. City of San Marcos, 989 F.2d 362, 364 (9th Cir. 1993). "When two parties are so closely aligned in interest that one is the virtual representative of the other, a claim against one will serve to bar the same claim by or against the other." In re Imperial Corp., 92 F.3d 1503, 1506 (9th Cir. 1996). "Plaintiff cannot circumvent the doctrine of res judicata by simply failing to name all possible defendants in a prior action." Praeger v. Computer Associates Int'l, Inc., 88 Fed.Appx. 186, 188 (9th Cir. 2004), citing Ruple v. City of Vermillion, 714 F.2d 860, 862 (8th Cir. 1983), cert. denied, 465 U.S. 1029 (1984).

Since Genchev had only one primary right – the right to have defect free tractors – he gets only one lawsuit in which to bring all of his claims for damages. (See Motion, p. 4-7) Importantly, the Opposition relies on a December 20, 2006 letter referring to coolant leak and other items – see also, Exhibit C to Genchev declaration. The case against

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Freightliner was not tried until March 2008. (See Jury Verdict, dated March 24, 2008, Ex. 3 to Detroit Diesel's RJN.) The letter in Exhibit C to the Genchev declaration was marked as Trial Exhibit 64 in the prior action. Exhibit D to the Genchev declaration was dated January 5, 2007 and was marked as Trial Exhibit 37 in the prior action, which was identified but not introduced into evidence during the prior trial. (See Ex. 1 hereto – the exhibit list from the trial, for which Detroit Diesel also requests the court take judicial notice.) See Feminist Women's Health Center v. Codispoti, 63 F.3d 863, 868 (9th Cir. 1995) (holding res judicata bars subsequent action when plaintiff "had to produce substantially the same evidence in both suits to sustain its case").

II. THE NEGLIGENCE CLAIM IS BARRED BY THE ECONOMIC LOSS RULE

Due to allegations of fraud and misrepresentation, which are absent here, the economic loss rule was held not be preclude the claims in Robinson Helicopter Co. v. Dana Corp., 34 Cal.4th 979 (2004). As the California Supreme Court stated in Robinson, 34 Cal.4th at 991: "We hold the economic loss rule does not bar Robinson's fraud and intentional misrepresentation claims because they were independent of Dana's breach of contract." Genchev had asserted a claim for fraud against Freightliner in the prior action, whereas in this case he has not. Here, however, the economic loss rule clearly applies because the claims asserted against Detroit Diesel are limited to breach of contract and breach of warranty. Genchev is suing for "engine nonconformities" allegedly covered by the Detroit Diesel warranty (Genchev declaration, para. 5:11-12), coolant leak causing "unacceptable contamination of the engine oil" (Genchev declaration, para. 9) and unpaid repairs to the vehicle. (Genchev declaration, para. 5:12) These claims clearly fall within the economic loss rule as discussed in the moving papers and Genchev has no cause of action for negligence.

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III. NO PRIVITY OF CONTRACT EXISTS

The only argument presented on the merits of the breach of warranty cause of action is the conclusion that Detroit Diesel warranted the engines, the warranties are the same for both trucks and "[t]here is privity of contract between Detroit Diesel and Genchev through the express warranties Detroit Diesel provided." (Opposition, p. 5:22-26) In his declaration, Genchev concludes he purchased both trucks "from an authorized Detroit Diesel distributor." (Genchev declaration, para. 2, p. 1:24-26) No law is cited to support Genchev's position and he fails to address the cases cited in the moving papers which are directly on point – Avery v. Mapco Gas Products, Inc., 848 F.Supp. 1388, 1396 (N.D. Ill. 1991); Zepik v. Ceeco Pool & Supply, Inc., 637 F.Supp. 444, 450-51 (N.D. Ind. 1986); Parsley v. Monaco Coach Corp., 327 F.Supp.2d 797, 803-05 (W.D. Mich. 2004); Auto Owners Ins. Co. v. Chrysler Corp., 129 Mich. App. 38, 43, 341 N.W.2d 223 (1983); Mt. Holly Ski Area v. U.S. Elec. Motors, 666 F.Supp. 115, 119-20 (E.D. Mich. 1987).

Genchev purchased the tractors from Albuquerque Freightliner and Murray's Freightliner, as reflected in the purchase orders. (Ex. 1 and 2 to Hansen declaration) He has no contract with Detroit Diesel and he purchased the Freightliner tractors from a Freightliner dealer which both happened to have Detroit Diesel engines in them covered by warranties separate from the Freightliner warranties. That is no privity of contract with Detroit Diesel. Moreover, the Genchev declaration, paragraph 2, merely concludes, without any proper foundation, that the vehicles were purchased from "an authorized Detroit Diesel distributor" and that "Detroit Diesel expressly warranted the engines of the vehicles." Declarations must have proper foundation and not be conclusory. Fed.R.Civ.P. 56(e)(1); National Steel Corp. v. Golden Eagle Ins. Co., 121 F.3d 496, 502 (9th Cir. 1997) ("conclusory allegations . . . without factual support, are insufficient to defeat summary judgment"). To the extent either entity was an authorized Detroit Diesel repair facility for warranty repairs, that is something quite different. Genchev is incompetent to provide testimony that an entity is a Detroit Diesel distributor. He fundamentally lacks personal knowledge. The only privity is between Detroit Diesel and Freightliner when Detroit Diesel

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supplied Freightliner with engines and separate warranties for incorporation into the Freightliner tractors.[1] Genchev clearly did not purchase the engines from Detroit Diesel; instead, he purchased Freightliner tractors which happened to include Detroit Diesel engines. Genchev cannot properly authenticate any Detroit Diesel warranty, which he attempts to do in paragraph 7 and with Exhibit B. However, Detroit Diesel disputes that Exhibit B is the written warranty for the engines contained in the subject tractors. Genchev attaches a print out from Albuquerque Freightliner in Exhibit B. Further, Exhibit B constitutes hearsay in that Albuquerque Freightliner is attempt to state the terms of the Detroit Diesel warranty. Likewise, Genchev concludes in paragraph 8 that Valley Power Systems is "an authorized Detroit Diesel warranty repair facility" and that, via Exhibit C, "Detroit Diesel admitted the engine nonconformities." Exhibit C to Genchev's declaration is a December 20, 2006 letter from Valley Power Systems which listed a "breakdown" of 17 "problems found with United # 23 – Serial # 06R0770106." The cases cited above (and in the moving papers) establish Genchev has no breach of warranty claim against the manufacturer of the engine components. Tellingly, Genchev only attaches the Freightliner warranty to his declaration. What he attaches in Exhibit B to his declaration is not the Detroit Diesel warranty; it is a print out of a summary of the warranty.[2]

Furthermore, Genchev's position ignores the recent case of Clemens v. DaimlerChrysler Corp., 2008 U.S. App. LEXIS 12929 (9th Cir., filed June 19, 2008), in which the Ninth Circuit held that "an end consumer such as Clemens who buys from a retailer is not in privity with a manufacturer." The lack of vertical privity "requires the

[1] This case is unlike Seeley v. White Motor Co., 63 Cal.2d 9, 12-14 (1965), in which the manufacturer included its express warranty on the purchase order itself. There is no express warranty from Detroit Diesel included on the purchase order for the two Freightliner tractors. (See Ex. 1 and 2 to Hansen declaration.)

[2] The copy of Exhibit B to Genchev's declaration is unreadable. Attached hereto as Exhibit 2 is a more legible copy received from counsel for plaintiff.

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dismissal of Clemen's implied warranty claims." Id. at *9. Thus, Clemens now compels a dismissal of Genchev's warranty claims.

IV. SEELEY V. WHITE DOES NOT SUPPORT EITHER THE BREACH OF CONTRACT OR THE VIOLATION OF COMMERCIAL CODE CAUSE OF ACTION

Genchev has no contract with Detroit Diesel. He is suing on the alleged warranties for the engines in the two Freightliner tractors. The Ninth Circuit rejects blending breach of contract and breach of warranty. See Mandeville Onoda Cement Co., 67 Fed.Appx. 417, 418 (9th Cir. 2003). Genchev has done just that by separately alleging causes of action for breach of contract and breach of warranty. As the California Supreme Court made clear in Seeley v. White, 63 Cal.2d 8, 14 (1965), if the warrantor fails to correct a defect as promised, "it is liable for the breach of that promise as a breach of warranty." The only theory of recovery in Seeley was breach of warranty. No recovery was based on breach of contract or violations of the Commercial Code. In referring to breach of contract on page 5 of the Opposition, Genchev refers to the summary of the Seeley opinion. The actual opinion in Seeley does not support the existence of a separate cause of action for breach of contract. Likewise, in Webster v. Klassen, 109 Cal.App. 583 (1952), cited in the Opposition, there was a written contract between the parties to provide seeds, and the case turned on whether it involved an express warranty or an implied warranty. Genchev is suing on the Detroit Diesel engine warranty, not on any contract he had with Detroit Diesel. He simply cannot state any claim for breach of contract.

Detroit Diesel did not sell its engines to Genchev, thereby eliminating the cause of action for violation of the California Commercial Code. Seeley involved the purchaser of a truck suing the manufacturer of the truck which had given an express warranty on the purchase order. Seeley did not involve the manufacturer of a component of the truck which issued no express warranty to the purchaser, which are the facts involved in this case.

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V. ARGUMENT IX OF THE OPPOSITION IS INAPPLICABLE BECAUSE GENCHEV ALLEGES NO CAUSE OF ACTION FOR UNJUST ENRICHMENT AGAINST DETROIT DIESEL

Genchev does not allege a cause of action for either unjust enrichment or restitution against Detroit Diesel. He alleges causes of action for breach of contract, violation of Commercial Code, breach of warranties and negligence. This portion of the Opposition (p. 6:7-19) appears to be taken from an opposition to one of Freightliner's motions in limine in the prior action. Genchev asserted a cause of action for unjust enrichment against Freightliner in the prior action as his seventh cause of action. (See Second Amended Complaint in Genchev v. Freightliner, Ex. 2 to Detroit Diesel's RJN.) However, Genchev has made no such claim against Detroit Diesel in this case.

VI. THE STATUTE OF LIMITATIONS BEGAN TO RUN PRIOR TO THE DECEMBER 20, 2006 LETTER FROM VALLEY POWER SYSTEMS

Argument VIII in the Opposition erroneously asserts the two or four year limitations period began to run with Exhibit C to the Genchev declaration – a December 20, 2006 letter. Genchev's deposition testimony in the prior action (Ex. 3 and 4 to Hansen declaration) is replete with evidence of engine-related repairs in 2005 and corresponding invoices.

Pursuant to Code of Civil Procedure §2725(2), a cause of action accrues "when tender of delivery is made"; a warranty for future performance of goods runs from when the nonperformance is or should have been discovered.

VII. THERE IS NO NEED FOR DISCOVERY

This motion raise purely legal issues, based on undisputed events and facts. No discovery about the repair records and warranty repair history will affect this motion. Since plaintiff's claims are barred by res judicata principles and no valid cause of action

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can be stated against Detroit Diesel, there is no basis to continue the hearing to allow discovery.

CONCLUSION

This entire lawsuit is barred as a matter of law. Genchev cannot pursue this second lawsuit against Detroit Diesel and he has no claims of breach of warranty, breach of contract, Commercial Code violations and negligence against Detroit Diesel. Therefore, Detroit Diesel's motion to dismiss should be granted without leave to amend.

Dated: July 28, 2008

GRACE, COSGROVE & SCHIRM
A Professional Corporation

By: /s/Lisa Kralik Hansen
Philip R. Cosgrove
Lisa Kralik Hansen

Attorneys for Defendant
DETROIT DIESEL CORPORATION

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DECLARATION OF LISA KRALIK HANSEN

I, Lisa Kralik Hansen, declare as follows:

I am an attorney at law duly licensed to practice before this Court. I am a member of the law firm of Grace, Cosgrove & Schirm, counsel of record for defendant Detroit Diesel Corporation in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

1. Attached hereto as Exhibit 1 is a true and correct copy of the Exhibit List from the trial in the prior action, Genchev v. Freightliner.

2. Attached hereto as Exhibit 2 is a more legible copy of Exhibit B to the Genchev declaration, which I requested and received from plaintiff's counsel because Exhibit B to the Opposition was unreadable.

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Executed on July 28, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

/s/ Lisa Kralik Hansen
Lisa Kralik Hansen

EXHIBIT 1

MINUTES OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EXHIBIT LIST

EUGENE GENCHEV VS FREIGHTLINER, LLC., ET AL.

X Plaintiff X Defendant ___ Court Type of Hearing: JURY TRIAL

Case Number: 2005CV2071-JLS(JMA)

NO.	IDENT.	EVID.	DESCRIPTION
1	March 5, 2008	March 5, 2008	Freightliner Breakdown Report dated December, 2003-January, 2004 and claim history
2	March 5, 2008	March 5, 2008	Repair record for 2004 Freightliner dated December 16, 2003
3	March 5, 2008	March 5, 2008	Pre-delivery inspection and repair records dated January 26, 2004
4	March 5, 2008	March 5, 2008	Freightliner Problem Ticket Report dated April, 2005
5	March 3, 2008	March 3, 2008	Freightliner Recall Campaign FL 420A dated May, 2004
6	March 5, 2008	March 5, 2008	Repair record for 2004 Freightliner dated May 5, 2004
7	March 3, 2008		Customer Purchase Order dated August 2, 2004
8	March 11, 2008		Albuquerque Freightliner repair order dated December 27, 2003
9	March 11, 2008	March 11, 2008	Albuquerque Freightliner repair order dated May 3, 2004 (2004 Columbia)
10	March 3, 2008	March 3, 2008	Albuquerque Freightliner repair order dated February 16, 2005 (2004 Columbia)
11	March 3, 2008	March 3, 2008	Los Angeles Freightliner repair order dated February 24, 2005 (2004 Columbia)
12	March 3, 2008		Eugene Genchev - Owner of Freightliner Columbia 2004 Chronicles
13	March 3, 2008	March 3, 2008	Letter from Genchev Trucking to Freightliner dated April 13, 2005
14	March 3, 2008	March 3, 2008	Los Angeles Freightliner repair order dated May 18, 2005 (2004 Columbia)
15	March 5, 2008	March 5, 2008	Claim History for 06R7252287
16			
17	March 3, 2008	March 3, 2008	Los Angeles Freightliner repair order dated May 25, 2005 (2004 Columbia)
18	March 6, 2008	March 6, 2008	Letter from Freightliner, LLC., to Genchev dated June 8, 2005
19	March 3, 2008	March 3, 2008	West Virginia Truck & Trailer repair order dated June 28, 2005 (2004 Columbia)
20	March 4, 2008	March 4, 2008	Greens Fork Alignment repair order dated August 12, 2005 (2004 Columbia)
21	March 4, 2008	March 4, 2008	Two Guys Truck Parks invoice dated August 23, 2005 (2004 Columbia)
22	March 4, 2008	March 4, 2008	Amarillo Truck Center repair order dated September 25, 2005 (2004 Columbia)
23	March 4, 2008	March 4, 2008	Amarillo Truck Center repair order dated September 27, 2005 (2004 Columbia)
24	March 4, 2008	March 4, 2008	Valley Power Systems repair order dated October 19, 2005 (2004 Columbia)

25	March 4, 2008	March 4, 2008	Parkhouse Tire, Inc., invoice dated October 24, 2005 (2004 Columbia)
26	March 4, 2008	March 4, 2008	Amarillo Truck Center repair order dated April 13, 2006 (2004 Columbia)
27	March 4, 2008	March 4, 2008	Valley Power Systems repair order dated May15, 2006 (2004 Columbia)
28	March 4, 2008	March 4, 2008	W.W. Williams repair order dated May 24, 2006 (2004 Columbia)
29	March 4, 2008	March 4, 2008	Albuquerque Freightliner repair order dated May 22, 2006 (2004 Columbia)
30	March 4, 2008	March 4, 2008	On the Border Freightliner repair order dated May 25, 2006 (2004 Columbia)
31	March 4, 2008	March 4, 2008	Travel Centers of America invoice dated June 4, 2006 (2004 Columbia)
32	March 4, 2008	March 4, 2008	Reich Logistics Services, Inc., load and rate confirmation
33	March 11, 2008		Valley Power Systems repair order dated October 6, 2006 (2004 Columbia)
34	March 11, 2008	March 11, 2008	Stauffer's Skyhook Towing invoice dated December 1, 2006 (2004 Columbia)
35	March 11, 2008	March 11, 2008	S.D. Pacific Crest Services invoice dated December 4, 2006 (2004 Columbia)
36	March 5, 2008	March 11, 2008	Tracey Road Equipment invoice dated December 15,2 006 (2004 (Columbia)
37	March 11, 2008		Boss Truck Stop "Blood Test For Your Truck" invoice dated January 5, 2007
38	March 11, 2008		Valley Power Systems receipts dated January 29, 2007
39			
40	March 6, 2008	March 6, 2008	Clipper Group invoice dated January 17, 2007
41	March 6, 2008	March 6, 2008	Letter from Clipper Group San Diego to Eugene Genchev dated October 10, 2006
42	March 4, 2008	March 4, 2008	Vegas Freight Load Assignment Sheet dated May 11, 2006
43			
44	March 4, 2008	March 4, 2008	Purchase Order for 2005 Freightliner XL dated March 2, 2005
45			
46	March 4, 2008	March 4, 2008	Valley Freightliner, Inc., repair order, undated (Freightliner XL)
47	March 4, 2008	March 4, 2008	Brothers Towing invoice dated September 20, 2005 (Freightliner XL)
48	March 4, 2008	March 4, 2008	Valley Freightliner, Inc., repair order dated October 24, 2005 (Freightliner XL)
49	March 4, 2008	March 4, 2008	Freightliner Sterling Western Star repair order dated Nov. 13, 2005 (Freightliner XL)
50	March 4, 2008	March 4, 2008	Los Angeles Freightliner repair order dated June 6, 2005 (Freightliner XL).
51	March 4, 2008		Letter from Detroit Diesel Corporation to Eugene Genchev dated May 16, 2005
52	March 4, 2008	March 4, 2008	Detroit Diesel Corporation S60 EGR DDEC V Injector Harness Modification
53	March 4, 2008	March 4, 2008	Fax from Genchev Trucking to Freightliner dated November 1, 2005
54	March 4, 2008	March 4, 2008	Letter from Eugene Genchev to Ken Cummings dated February 27, 2006 w/enclosures
55			
56	March 4, 2008	March 4, 2008	FYDA Freightliner Columbus repair order dated May 22, 2006 (Freightliner XL)

57	March 4, 2008	March 4, 2008	Blount's Wrecker Service & Storage receipt dated October 8, 2006
58	March 4, 2008	March 4, 2008	Photographs (9) of drive shaft (Freightliner XL)
59	March 4, 2008	March 4, 2008	Travel Centers of America October 8, 2006 (Freightliner XL)
60	March 4, 2008	March 4, 2008	Freightliner of Savannah repair order dated October 10, 2006 (Freightliner XL)
61	March 4, 2008	March 4, 2008	Pilot Truck Care Centers invoice dated October 14, 2006 (Freightliner XL)
62			
63			
64			
65			
66	March 4, 2008	March 4, 2008	Val - U Inn Motel receipt dated October 24, 2005
67			
68.3	March 4, 2008	March 4, 2008	Various faxes from Eugene Genchev with attachments.
68.4	March 4, 2008	March 4, 2008	Various faxes from Eugene Genchev with attachments.
68.5	March 4, 2008	March 4, 2008	Various faxes from Eugene Genchev with attachments.
68.6	March 4, 2008	March 4, 2008	Various faxes from Eugene Genchev with attachments.
68.7	March 4, 2008	March 4, 2008	Various faxes from Eugene Genchev with attachments.
69	March 3, 2008	March 3, 2008	Owners warrant information manual (July 2003) for both tractors
70.0	March 10, 2008	March 11, 2008	Freightliner warranty repair history for 2004 Columbia
70.1	March 10, 2008	March 11, 2008	Freightliner warranty repair history for 2004 Columbia
71			
72.0	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.1	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.2	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.3	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.4	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.5	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.6	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
72.7	March 11, 2008	March 11, 2008	Customer Assistance file for 2004 Columbia
73			
74	March 6, 2008	March 6, 2008	Quality Assurance File for 2004 Columbia
75.6	March 11, 2008	March 11, 2008	Freightliner warranty repair history for 2005 XL
76	March 10, 2008	March 10, 2008	ECM Printout for 2005 XL

77			
78	March 11, 2008		Seriel File for 2005 XL
79			
80			
81			
82.0	March 10, 2008	March 11, 2008	Van Slyke photographs (comments on photograph to be redacted)
82.1	March 10, 2008	March 11, 2008	Van Slyke photographs (comments on photograph to be redacted)
82.2	March 10, 2008	March 11, 2008	Van Slyke photographs (comments on photograph to be redacted)
82.3	March 10, 2008	March 11, 2008	Van Slyke photographs (comments on photograph to be redacted)
82.4	March 10, 2008	March 11, 2008	Van Slyke photographs (comments on photograph to be redacted)
83.3	March 4, 2008	March 11, 2008	Scott Craig photographs
83.5	March 4, 2008	March 11, 2008	Scott Craig photographs
83.34	March 4, 2008	March 11, 2008	Scott Craig photographs
83.99	March 4, 2008	March 11, 2008	Scott Craig photographs
83.111	March 4, 2008	March 11, 2008	Scott Craig photographs
83.113	March 4, 2008	March 11, 2008	Scott Craig photographs
84	March 10, 2008	March 11, 2008	Bearcat logistics load and rate confirmation dated May, 2006
85	March 10, 2008	March 11, 2008	Schneider National Load and rate confirmation May, 2006
86	March 10, 2008	March 11, 2008	Priority Transportation Brokers load and rate confirmation dated April, 2006
87			
88			
89			
90	March 6, 2008	March 11, 2008	Diagram of Brackets & Bolts attached to Framerail
91	March 6, 2008	March 11, 2008	Color Diagram of Brackets & Bolts Mounted Together

EXHIBIT 2

ALBUQUERQUE FREIGHTLINER

12901 West Highway 66 (West Frontage Road)
Albuquerque, New Mexico 87121
Phone 505.833.1000 Fax 505.833.1064

STERLING

August 2, 2004

Eugene Genchev

New Freightliner CL120 Vin# 1FUJA6CK34DM92600
WILL HAVE 5 YEAR 500,000 MILE ENGINE WARRANTY AT NO CHARGE.

Thanks

Byron Schrunk

Coverage 17SE199 / 0202

Serial Num 06R0752287 **Model** 6067HK6E **Delv Date** 02 AUG 2004

TYPE: STANDARD WARRANTY

MONTHS: 24

MILES/HRS: Unlimited

ENG R&R?

PARTS?

LABOR?

ALL ENGINE COMPONENTS SUPPLIED BY DETROIT DIESEL ARE COVERED TO THE TIME AND MILEAGE LIMITS OF THE BASE WARRANTY DESCRIBED ON THE LEFT. ANY COMPONENTS, INCLUDING MAJOR COMPONENTS, WITH EXCEPTIONS TO THESE LIMITS ARE SHOWN BELOW. NOTE: MAJOR COMPONENTS ARE COVERED TO THE LIMITS OF THE BASE WARRANTY, THEN TO 500,000 MILES IN MONTHS 25-60, PARTS AND NO LABOR. THE TF550 COMPRESSOR IS A SPECIAL MAJOR COMPONENT, AND IS COVERED FOR 100% PARTS AND 100% LABOR. FOR ADDITIONAL INFORMATION REFER TO THE WARRANTY PARCHMENT.

MAJOR COMPONENT AND OTHER EXCEPTIONS:

COMPONENT	Miles/Hrs	Parts	Months of Parts Cvrg	Labor	Months of Labor Cvrg
AIR COMPR	Unlimited	Y	24	Y	24
AIR COMPR/TF550	500,000	Y	60	Y	60
AIR INL HSG	500,000	Y	60	Y	24
ALT/GEN	Unlimited	Y	24	Y	24
CAMSHAFT	500,000	Y	60	Y	24
CONN ROD	500,000	Y	60	Y	24
CRANKSHAFT	500,000	Y	60	Y	24
CYLINDER BLOCK	500,000	Y	60	Y	24
CYLINDER HEAD	500,000	Y	60	Y	24
DDC ENGINE BRAKE	Unlimited	Y	24	Y	24
FILTER,FUEL	15,000	Y	6	Y	6
FILTER,LUBE OIL	15,000	Y	24	Y	24
FLYWHEEL HOUSING	500,000	Y	60	Y	24
INJECTOR	100,000	Y	24	Y	24
MAIN BEARING BOLTS	500,000	Y	60	Y	24
NOGROUP	0	N	0	N	0
OIL COOLER HOUSING	500,000	Y	60	Y	24
STARTER	100,000	Y	24	Y	24
THERMOSTAT	240,000	Y	24	Y	24
THERMOSTAT SEAL	240,000	Y	24	Y	24
WATERPUMP HSG	500,000	Y	60	Y	24

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 444 South Flower Street, Suite 1100, Los Angeles, California 90071.

On July 28, 2008, I served the within document(s) described as:

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION DISMISS PLAINTIFFS COMPLAINT FOR FAILURE TO STATE A CLAIM FOR RELIEF AND, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT; DECLARATION OF LISA KRALIK HANSEN; EXHIBITS

on the interested parties in this action as stated on the attached mailing list.

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY FAX) By transmitting a true copy of the foregoing document(s) via facsimile transmission from this Firm's sending facsimile machine, whose telephone number is (213) 533-5444, to each interested party at the facsimile machine telephone number(s) set forth on the attached mailing list. Said transmission(s) were completed on the aforesaid date at the time stated on the transmission record issued by this Firm's sending facsimile machine. Each such transmission was reported as complete and without error and a transmission report was properly issued by this Firm's sending facsimile machine for each interested party served. A true copy of each transmission report is attached to the office copy of this proof of service and will be provided upon request.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 28, 2008, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Liv Kirchoff — (Type or print name)

Liv Kirchoff — (Signature)

GRACE, COSGROVE & SCHIRM
A PROFESSIONAL CORPORATION
444 S. FLOWER STREET, SUITE 1100
LOS ANGELES, CALIFORNIA 90071
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